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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

ROBERT DANIEL CARRIGER,

Defendant and Appellant.

E070268

(Super.Ct.No. 18CJ000111)

OPINION

APPEAL from the Superior Court of San Bernardino County. Patrick L. Christianson, Temporary Judge. Dismissed.

Robert L. Hernandez, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Arlene A. Sevidal, Collette C. Cavalier, and Elizabeth M. Kuchar, Deputy Attorneys General, for Plaintiff and Respondent.

I

INTRODUCTION

In 2016, defendant and appellant Robert Daniel Carriger pleaded no contest to one count of domestic violence and was sentenced to two years in prison. In 2017, he was placed on postrelease community supervision (PRCS). Defendant was found to be in violation of the terms and conditions of his PRCS on numerous occasions, and in January 2018, another petition to revoke his PRCS was filed.

After defendant requested to represent himself and waived his right to counsel under *Faretta v. California* (1975) 422 U.S. 806 (*Faretta*), the trial court granted his request. Defendant subsequently admitted to violating the terms and conditions of his PRCS as a result of failing to report to the probation department. The trial court thereafter reinstated defendant's PRCS on its original terms and conditions and sentenced him to 120 days in county jail with 32 days of credit for time served.

Defendant's sole contention on appeal is that the trial court conducted an inadequate inquiry into whether his waiver of his right to counsel was knowing and voluntary. The People contend the appeal should be dismissed because defendant failed to obtain a certificate of probable cause and the appeal is moot. Because we agree with the People that a reversal would have no practical effect, we shall dismiss the appeal as moot.

II

PROCEDURAL BACKGROUND¹

On March 30, 2016, defendant pleaded no contest to one count of inflicting corporal injury on a spouse/cohabitant (Pen. Code, § 273.5, subd. (a)),² and was sentenced to two years in state prison.

On February 8, 2017, defendant was released from custody and placed on PRCS on various terms and conditions.

On March 10 and July 19, 2017, the San Bernardino County Probation Department filed petitions alleging defendant violated the terms and conditions of his PRCS. On both occasions, defendant admitted to violating the terms and conditions of his PRCS, and in each instance, the trial court reinstated defendant's PRCS.

On January 17, 2018, the San Bernardino County Probation Department filed a third petition alleging defendant violated the terms and conditions of his PRCS by failing to report to probation upon his release from custody and failing to cooperate with his assigned probation officer.

On February 6, 2018, defendant requested to represent himself in the PRCS violation proceedings and executed a written *Faretta* waiver. Defendant stated that although he was not a lawyer, he was capable of defending himself. The trial court

¹ Because the underlying factual background is not relevant to the issue raised on appeal, we will not recount those details.

² All future statutory references are to the Penal Code unless otherwise stated.

provided defendant time to review the *Faretta* waiver form detailing the rights he would be giving up and advising him of the disadvantages of self-representation. After a brief recess, the court recalled defendant's case and the following colloquy occurred:

"THE COURT: . . . [Defendant], did you have a chance to go over those rights?

"[DEFENDANT]: Yes.

"THE COURT: Do you understand them all?

"[DEFENDANT]: Yeah.

"THE COURT: Do you have any questions about any of them?

"[DEFENDANT]: No.

"THE COURT: You will need to sign the form. I believe there was a place for his initials. And before you initial that, do you understand and read all those and sign it, and we'll let you represent yourself."

Defendant initialed and signed the *Faretta* waiver form, indicating that he had a high school education, had been involved in criminal proceedings in the past, felt capable of representing himself, and had no difficulties in reading and understanding the form. The court granted defendant's request to represent himself in the PRCS violation proceedings, and issued the following order: "The Court has made inquiry into the defendant's educational background, training and knowledge, and based on the inquiry and the advisement to the defendant of all of the above initialed statements, finds that the defendant knowingly, intelligently and voluntarily gives up his/her right to counsel and may represent himself/herself [in] all proceedings in this case."

At this same hearing, defendant explained that he failed to report to probation because he had “a lot of medical issues,” was “post-surgery,” had “been to the hospital at least 10 times,” and was unable to move due to debilitating pain. The court inquired whether defendant had provided any documentation to verify his claim to his probation officers. Defendant responded, “No, I haven’t.” The court gave defendant one week to obtain any form of written documentation or medical records that would corroborate his story.

Thereafter, the matter was continued twice to allow defendant more time to obtain the necessary documents. At a hearing on March 8, 2018, defendant indicated that he had finally obtained the medical records for the court. The court explained that it needed time to review the medical documents and would set the PRCS violation hearing for March 19, 2018. Following a colloquy between the court and defendant concerning defendant’s medical issues and his claim that his civil rights had been violated when he was arrested, defendant stated: “Just give me the deal. But I want the record to reflect that my rights have been violated. My civil rights have been violated and I will file a civil lawsuit, just so you know. I feel my rights have been violated, and as a matter of fact I will file. That’s all I got to say. I’ll take the 120.”

Thereafter, defendant waived his constitutional rights, and admitted to violating his PRCS by failing to report to probation as required by the terms and conditions of his PRCS. The court revoked and reinstated defendant’s PRCS on its original terms and

conditions and ordered defendant to serve an additional 120 days in county jail with 32 days of credit for time served.

On March 27, 2018, defendant filed a timely notice of appeal challenging “the validity of the plea or admission of probation violation” and a request for certificate of probable cause. Defendant’s request for a certificate of probable cause was denied.

On March 29, 2018, defendant sent a letter to the San Bernardino County Superior Court Appeals Division, indicating he would like to ask the appellate court to consider a motion to file a late notice of appeal to challenge his original 2016 conviction. The appellate division of the superior court informed defendant a notice of appeal from his original conviction would be untimely given that the original judgment was rendered in 2016.

On April 11, 2018, defendant’s appellate counsel filed an amended notice of appeal, indicating he was appealing the judgment stemming from his admission of a PRCS violation.

III

DISCUSSION

Defendant argues the trial court prejudicially erred in conducting an inadequate inquiry into whether his waiver of his right to counsel was knowing and voluntary. The People assert that the appeal should be dismissed because defendant failed to obtain a certificate of probable cause and the appeal is moot. In the alternative, the People contend the record shows defendant’s waiver of his right to counsel was knowing and

voluntary, and any deficiency in the court's inquiry in granting the *Faretta* request was harmless beyond a reasonable doubt.³

It is not the function of an appellate court to render an opinion upon moot questions or abstract principles of law, or to declare rules of law that can have no effect on the matter before the court. (*People v. Rish* (2008) 163 Cal.App.4th 1370, 1380.) “[A] case becomes moot when a court ruling can have no practical effect or cannot provide the parties with effective relief.” (*Lincoln Place Tenants Assn. v. City of Los Angeles* (2007) 155 Cal.App.4th 425, 454.) “[A]n action that originally was based on a judiciable controversy cannot be maintained on appeal if all the questions have become moot by subsequent acts or events. A reversal in such a case would be without practical effect, and the appeal will therefore be dismissed.” (*People v. Herrera* (2006) 136 Cal.App.4th 1191, 1198.)

As noted above, following defendant's third violation of PRCS for failing to report to the probation department, the court reinstated defendant's PRCS on its original terms and conditions and ordered defendant to serve 120 days in county jail with 35 days of credit for time served. Defendant acknowledges he has already completed his jail term and a reversal cannot give him back the 32 days he spent in jail while his PRCS was revoked. The appeal is technically moot because our resolution of the issue raised by defendant can offer him no effective relief. We cannot undo the jail time he has already

³ Because we find the appeal is moot, we will not address the People's alternative contentions.

served, and it would be pointless to reverse the case due to the court's failure to conduct an adequate *Faretta* inquiry.

Defendant claims the appeal is not moot because the duration of his PRCS has been extended by 32 days and a reversal “would allow him an opportunity to have his period of supervision shortened by that amount of time.” In support, defendant cites section 1203.2, subdivision (a), which provides that “revocation, summary or otherwise, shall serve to toll the running of the period of supervision.” However, in *People v. Johnson* (2018) 29 Cal.App.5th 1041, the appellate court held that when PRCS is revoked and reinstated, the period of revocation does not automatically extend the length of the originally imposed period of supervision, although a court may choose to extend the original expiration date for PRCS within the maximum statutory period. (*Id.* at p. 1050.)

In his reply brief, defendant cites to this court's opinion in *People v. DePaul* (1982) 137 Cal.App.3d 409 (*DePaul*), in which this court held that “tolling under section 1203.2 was automatic, and that if ‘a trial court wishes to void or cancel the tolling effect of the revocation it must do so expressly.’” Defendant asserts that, as far as he is “aware, this is still good law in the Fourth Appellate District.” Defendant is mistaken. In a footnote, our Supreme Court in *People v. Leiva* (2013) 56 Cal.4th 498 (*Leiva*) disapproved of the conclusion reached by this court in *DePaul*, at page 415, that, ““if probation is reinstated the period of revocation cannot be counted in calculating the expiration date.”” (*Leiva*, at p. 518, fn. 7.)

In *Leiva, supra*, 56 Cal.4th 498, the Supreme Court addressed whether section 1203.2, subdivision (a)'s tolling provision permitted the trial court to find the defendant had violated probation based on an act committed while probation was summarily revoked but after the probationary period had expired. (*Leiva*, at pp. 502-503.) The Supreme Court rejected the People's position that the word "toll" in section 1203.2, subdivision (a), means "extend," so that probation "continue[s] indefinitely from the time of summary revocation until the defendant is brought before the [trial] court for a formal revocation hearing." (*Leiva*, at p. 507.) Noting that "[a] change in circumstances is required before a court has jurisdiction to extend or otherwise modify probation," the Supreme Court held that the tolling provision merely "allow[s] the trial court to retain the authority to adjudicate a claim that the defendant violated a term of probation during the court-imposed period of probation." (*Id.* at pp. 505, 518, italics omitted.)

"Although the central issue in *Leiva* involved an attempt to establish a probation violation that occurred after the court-imposed probationary period had elapsed, the reasoning of *Leiva* extends further in recognizing that tolling following summary revocation is a procedural mechanism for preserving the [trial] court's jurisdiction to adjudicate whether a probation violation has occurred during the previously imposed probationary period[,] . . . not a mechanism for extending that probationary period beyond its statutory time limits." (*People v. Sem* (2014) 229 Cal.App.4th 1176, 1192.) Indeed, as noted above, *Leiva* disapproved the conclusion reached by this court in

DePaul, *supra*, 137 Cal.App.3d at page 415, that tolling under section 1203.2, subdivision (a), is automatic. (*Leiva*, *supra*, 56 Cal.4th at p. 518, fn. 7.) In other words, when probation—in this case PRCS—is reinstated, the period during which it was revoked counts toward, and does not extend, the original term. Footnote 7 of *Leiva* is dispositive here.

In this case, there is nothing in the record to support defendant’s claim that his period of supervision was extended by the 32 days his PRCS was revoked. The trial court merely stated in its oral pronouncement that “community supervision is reinstated.” The court’s minute order of the hearing indicates that “Community Supervision is continued on original Terms and Conditions” and did not list any modifications.

Defendant further asserts that, “even if *Johnson* is applicable, and the tolling extension has not come into effect automatically, there is nothing in the tolling statute, or in *Johnson*, that precludes the trial court in this case from going back later and extending [his] supervision at some later time. As long as [his] conviction for the violation stands, he is at risk of having the court extend his supervision, even if [the People’s] argument is accepted.” Defendant’s argument is speculative. Defendant also mistakenly believes that his PRCS violation is a “conviction.”

Defendant was not convicted of a crime. Moreover, the conduct that caused the probation department to seek to revoke defendant’s PRCS—i.e., his failure to report to his probation officer—was not criminal in nature. While his PRCS violation may not reflect well on his performance on postrelease supervision, defendant does not suggest he

is somehow stigmatized by the minor PRCS violation. (*People v. Delong* (2002) 101 Cal.App.4th 482, 484.)

We note a mootness inquiry may include consideration of whether a successful appeal can eliminate or ameliorate disadvantageous collateral consequences that may otherwise result. (Cf. *People v. Ellison* (2003) 111 Cal.App.4th 1360, 1368-1369.) Performance on PRCS likely can be considered for purposes of deciding whether to grant probation in the event defendant is convicted of a new offense. (See Cal. Rules of Court, rule 4.414(b)(2) [listing prior performance on “probation . . . or parole” as a factor in deciding to grant or deny probation]; see also *People v. Jones* (2014) 231 Cal.App.4th 1257, 1266-1267 [PRCS is similar to parole and merely modifies the agency that supervises the defendant upon release].) In addition, if defendant were to suffer a criminal conviction in the future, poor performance on PRCS could potentially be used as a circumstance in aggravation when considering the appropriate sentence to impose. (Cf. Cal. Rules of Court, rule 4.421(b)(5).)

We are not persuaded that the potential use of a defendant’s PRCS violation as a sentencing factor in future criminal proceedings suffices to constitute “collateral consequences” for purposes of a mootness analysis, at least under the facts presented here. We are guided by the analysis in the United States Supreme Court’s decision in *Spencer v. Kemna* (1998) 523 U.S. 1 (*Spencer*). There, the court addressed whether a challenge to an order revoking the respondent’s parole was moot when the respondent had fully served the prison term imposed for the parole revocation. (*Id.* at p. 3.) In

concluding that respondent's claim was moot, the United States Supreme Court observed that while a criminal conviction entails adverse collateral legal consequences, "[t]he same cannot be said of parole revocation." (*Id.* at p. 12.) The court reasoned that it was not enough that the parole violations could be used by the parole board to deny the petitioner parole in the future. (*Id.* at p. 13.) According to the court, the violations were simply one factor that could be considered among many. (*Ibid.*) The mere presence or absence of the recorded violation did not mandate a particular consequence. (*Ibid.*) Instead, the decision would necessarily be left to the discretion of the parole authority, which would likely place more emphasis on the nature of the parole violation instead of the mere fact parole had been revoked. (*Ibid.*)

Just as in *Spencer*, the challenged action here concerns revocation of a term of postrelease supervision—technically PRCS instead of parole—rather than a criminal conviction. Such a revocation does not entail the same adverse collateral consequences that accompany a criminal conviction. (See *Spencer, supra*, 523 U.S. at p. 12.) The revocation of PRCS, like the revocation of a period of probation or parole, is just one of many factors the court may consider in deciding whether to grant probation or to sentence a defendant in a subsequent criminal matter. (See generally Cal. Rules of Court, rules 4.414, 4.421.) Further, the court in any future criminal case could consider the circumstances underlying revocation of PRCS, probation, or parole. In this case, the behavior that led the probation department to seek to revoke defendant's PRCS on multiple occasions was not itself criminal. It was defendant's failure to report to his

probation officer that prompted the filing of the third revocation petition. The court below apparently found it so insubstantial that it reinstated defendant's PRCS on its original terms and conditions. There is no reason to believe that a sentencing court in any future criminal action against defendant would attach any greater weight to the PRCS violation.

Moreover, it strains credulity to suggest that defendant's trivial PRCS violation at issue in this appeal would carry much weight upon a future sentence in light of defendant's extensive criminal history. Defendant suffered his first criminal conviction in 2000 and has been convicted of numerous misdemeanors and felonies since then. His record reflects numerous occasions since 2000 during which his probation and parole were revoked. As a person who has suffered at least two felony convictions, defendant would be presumptively ineligible for probation in any future criminal action. (§ 1203, subd. (e)(4).) Consequently, the PRCS violation for failing to report to a probation officer would likely have no practical impact upon defendant's future eligibility for probation or any potential sentence. Under the circumstances, we conclude that the mere possibility defendant's minor PRCS violation might be mentioned as one of many sentencing factors in future criminal proceedings does not constitute disadvantageous "collateral consequences" for purposes of assessing mootness.

Defendant admits to having completed his jail term, and our resolution of the issue raised by defendant can offer no effective relief to him. We cannot undo the jail time he has already served. Therefore, based on the foregoing, this appeal is moot.

IV
DISPOSITION

The appeal is dismissed.

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CODRINGTON
J.

We concur:

MILLER
Acting P. J.

SLOUGH
J.